UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,240	02/14/2006	Naomi Nishikata	VPM-00101	9555

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EXAMINER
HUYNH, NAM TRUNG

ART UNIT	PAPER NUMBER
2617	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/568,240	NISHIKATA ET AL.
	Examiner	Art Unit	
	NAM HUYNH	2617	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>12 June 2009</u>.

2a) ☐ This action is **FINAL.**   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-18</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-18</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/12/09

has been entered.

Response to Amendment

This office action is in response to amendment filed on 6/12/09. Of the

previously presented claims 1-18; claims 1-7 and 9-12 were amended.

Claim Rejections - 35 USC § 112

2.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly
claiming the subject matter which the applicant regards as his invention.

3.   Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

Regarding claim 1, lines 4-6 of the claim recite: "an application program

execution means environment executable on said [software] platform for executing an

application program using data stored in said second memory means, said application

program being platform-independent". The application execution environment executes

the application program and is stated to reside "on" the software platform, which implies

that the application program is executed "on" the software platform. The Examiner

interprets a software platform as a means to execute or run software. The claim is

indefinite because the subject matter implies that an application program is executed on

a software platform, but the application program is platform-independent. This is a

contradiction because an application cannot be executed on a software platform and at

the same time be independent from it. Therefore for examining purposes with respect

to the prior art, the application program will be interpreted as being "platform-

dependent", which is the Examiner's best interpretation of the subject matter.

     Regarding claims 4, 5, 6, 7, and 11, the limitations are rejected for the same

reasons set forth above in claim 1.

     Regarding claims 2, 3, 8-10, and 12-18, the limitations are rejected based on

their dependence on the above independent claims.

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5.   Claims 1-7 and 9-18 are rejected under 35 U.S.C. 102(e) as being anticipated by

Masuyama et al. (US 2004/0029640) (hereinafter Masuyama).

Regarding claim 1, Masuyama teaches a mobile communication terminal

(portable game apparatus) comprising (paragraph 98):

first memory means (latches) and second memory means (work RAM) for storing

data (paragraphs 100, 102, 104; latches hold respective values of an X and Y counter);

a software platform (work RAM) arranged to use data stored in said first memory

means (paragraph 100, 117; work RAM uses data stored in latches for the game

program);

an application program execution environment (temporary data) executable on

said platform for executing an application program (game program) using data stored in

said second memory means, said application program being platform-dependent

(paragraph 100, 117; the CPU utilizes the temporary data stored in the work RAM to

execute a game program);

detection means for detecting at least one of position, direction, attitude and

movement of the mobile communication terminal along at least one axis of a coordinate

system (paragraph 99);

memory process means for performing a memory process to memorize store

detection result data acquired based on detection results by said detection means in

said first memory means, wherein the detection result data includes information

concerning changes to the at least one of position, direction, attitude and movement of

the mobile communication terminal along the at least one axis (paragraphs 102, 104;

the latches store values from the xy-axis acceleration sensor and the z-axis contact

switch); and

data transfer means for transferring the detection result data memorized stored in

said first memory means to said second memory means, according to a data transfer

instruction from said application program execution environment (paragraphs 117, 119;

the values held in the latches are transferred to the work RAM);

wherein said application program execution eninrment executes said application

program using the detection result data memorized stored in said second memory

means (paragraph 100, 117; work RAM is used to execute the game program).

Regarding claim 2, Masuyama teaches said application program execution

environment has an instruction set for generating said data transfer instruction

according to description in said application program (paragraph 100).

Regarding claim 3, Masuyama teaches an application program (game program),

characterized in that a computer in said mobile communication terminal according to

claim 2 works so that the application program execution environment generates said

data transfer instruction using said instruction set, by being executed by said application

program execution enviornment (paragraphs 99, 100).

Regarding claim 4, Masuyuma teaches a mobile communication terminal

(portable game apparatus), comprising:

memory means for storing data (paragraphs 98, 102);

a software platform (work RAM) arranged to use data stored in said first memory means (paragraph 100, 117; work RAM uses data stored in latches for the game program);

an application program execution environment (temporary data) executable on said platform for executing an application program (game program) using data stored in said second memory means, said application program being platform-dependent (paragraph 100, 117 ; the CPU utilizes the temporary data stored in the work RAM to execute a game program);

a 3-axis magnetic sensor and a 2-axis acceleration sensor used as detection means for detecting at least one of position, direction, attitude and movement of the mobile communication terminal in connection with at least one axis of a coordinate system in accordance with a detection instruction generated by said application program execution environment according to a description of said application program (game program) (paragraphs 99, 108, the detecting means and acceleration sensor are used for instructions to play a game); and

memory process means for storing detection result data acquired based on detection results by said detection means in said memory means, wherein the detection results include information concerning changes to the at least one of position, direction, attitude and movement of the mobile communication terminal in connection with the at least one axis (paragraphs 102, 104; the latches store values from the xy-axis acceleration sensor and the z-axis contact switch); and

wherein said application program execution environment executes said application program using the detection result data stored in said memory means (paragraphs 100, 117; work RAM is used to execute the game program).

Regarding claim 5, Masuyuma teaches a mobile communication terminal (portable game apparatus) comprising:

a software platform (work RAM) arranged to use data stored in said first memory means (paragraph 100, 117; work RAM uses data stored in latches for the game program);

an application program execution environment (temporary data) executable on said platform for executing an application program (game program) using data stored in said second memory means, said application program being platform-dependent (paragraph 100, 117 ; the CPU utilizes the temporary data stored in the work RAM to execute a game program);

detection means for detecting at least one of position, direction, attitude and movement of said mobile communication terminal in connection with at least one axis of a coordinate system (paragraph 99); and

data process means for performing data process of assigning the detection data of said detection means to predetermined arithmetic expression (count value) for calculation and storing the calculation result data in said memory means, wherein the detection data includes information concerning changes to the at least one of position, direction, attitude and movement of the mobile communication terminal in connection with the at least one axis (paragraphs 103, 104); and

wherein said application program execution environment executes the

application program using the calculation result data memorized stored in said memory

means (paragraphs 100, 117; work RAM is used to execute the game program).

Regarding claim 6, Masuyuma teaches a mobile communication terminal

(portable game apparatus) comprising:

a software platform (work RAM) arranged to use data stored in said first memory

means (paragraph 100, 117; work RAM uses data stored in latches for the game

program);

an application program execution environment (temporary data) executable on

said platform for executing an application program (game program) using data stored in

said second memory means, said application program being platform-dependent

(paragraph 100, 117 ; the CPU utilizes the temporary data stored in the work RAM to

execute a game program);

detection means for detecting at least one of position, direction, attitude and

movement of said mobile communication terminal in connection with at least one axis of

a coordinate system (paragraph 99); and

data process means (CPU) for performing data processes of linking mutually

between detection data of said detection means or data calculated from this detection

data (data stored in the latch) and other data acquired by means other than said

detection means (program ROM), and storing the linked data in said memory means,

wherein the detection data includes information concerning changes to the at least one

of position, direction, attitude and movement of the mobile communication terminal in

connection with the at least one axis (paragraphs 100, 102; the CPU uses data stored in

the latch to and links it to instructions to operate the game program stored in the

program ROM); and

wherein said application program execution environment executes the

application program using said linked data memorized stored in said memory means

(paragraphs 100, 117; the CPU executes the game program in accordance to all

received data).

Regarding claim 7, Masuyama teaches Masuyuma teaches a mobile

communication terminal (portable game apparatus) comprising:

a software platform (work RAM) arranged to use data stored in said first memory

means (paragraph 100, 117; work RAM uses data stored in latches for the game

program);

an application program execution environment (temporary data) executable on

said platform for executing an application program (game program) using data stored in

said second memory means, said application program being platform-dependent

(paragraph 100, 117 ; the CPU utilizes the temporary data stored in the work RAM to

execute a game program);

detection means for detecting at least one of position, direction, attitude and

movement of said mobile communication terminal in connection with at least one axis of

a coordinate system (paragraph 99); and

data process means for performing a data process of specifying at least two of

detection data of said detection means or data calculated from the detection data (X or

Y axis outputs), which meet predetermined conditions (during a period), and storing the

specified data in said memory means, wherein the detection data includes information

concerning changes to the at least one of position, direction, attitude and movement of

the mobile communication terminal in connection with the at least one axis (paragraphs

99, 104); and

wherein said application program execution environment executes the

application program using said specified data memorized stored in said memory means

(paragraphs 100, 117; work RAM is used to execute the game program).

Regarding claim 9, Masuyama teaches said detection means includes angle

detection means for detecting an angle against the standard angle around a virtual axis

leading to a specified direction (paragraph 99, 113).

Regarding claim 10, Masuyama teaches said detection means includes

acceleration detection means for detecting acceleration toward a specified direction

working on said mobile communication terminal (paragraph 99).

Regarding claim 11, the limitations are rejected as applied to claim 1.

Regarding claim 12, Masayuma teaches the application execution environment is

executed using a process that is the same as the memory processor (paragraph 98, the

CPU executes the game program and controls operation of the memory).

Regarding claim 13, Masayuma teaches the first memory and the second

memory are different memory locations on a memory device (figure 3; the latches are

part of the cartridge and the work RAM is part of the memory on the portable game

apparatus).

Regarding claim 14, Masayuma teaches the at least one sensor includes at least one of: a magnetic sensor and an acceleration sensor (paragraph 99).

Regarding claim 15, Masayuma teaches the at least one sensor includes a geomagnetic sensor (paragraph 99).

Regarding claim 16, Masayuma teaches the coordinate system includes a spatial three-axis coordinate system (paragraph 99).

Regarding claim 17, Masayuma teaches execution of the application program using the detection result data includes displaying an action on a display of the mobile communication terminal that corresponds to a change in the at least one of position, direction, attitude and movement of the mobile communication terminal (paragraph 100).

Regarding claim 18, Masayuma teaches execution of the application program using the detection result data includes causing at least a portion of the application program to stop executing in response to a change in the at least one of position, direction, attitude and movement of the mobile communication terminal (paragraphs 100, 117).

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7.   The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

      1.   Determining the scope and contents of the prior art.
      2.   Ascertaining the differences between the prior art and the claims at issue.
      3.   Resolving the level of ordinary skill in the pertinent art.
      4.   Considering objective evidence present in the application indicating
           obviousness or nonobviousness.

8.   Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Masuyama et al. (US 2004/0029640) (hereinafter Masuyama) in view of Hartman et al.

(US 7,175,529) (hereinafter Hartman).

     Masuyama teaches the limitations set forth in claims 5, 6, or 7, and that the

mobile communication terminal further comprises radio communication means for

communicating outside by wireless communication utilizing radio waves (paragraph 98),

but does not explicitly teach radio wave strength confirmation means for confirming

strength of the radio waves utilized by said radio communication means at specified

time intervals; wherein said data process means is used as at least one part of said

radio wave strength confirmation means and performs said data process when

confirming radio wave strength. Hartman teaches a RF receiver module for receiving

game signals that comprises a receive signal strength indicator (RSSI) level detector

module for detecting signals from a game controller that transmits at different time

intervals. If the RSSI level is of sufficient strength the detector module sends a data

enable signal (confirmation of signal strength at specified time intervals). When the

signal is considered valid, the saved game data (perform data process) is passed

(column 5, lines 52-67, column 6, lines 26-45). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Masuyama, to include a RSSI level indicator, as taught by Hartman, in order to inform a user of the invention of the signal strength for playing a game using the modem. This modification enhances the flexibility of the invention by allowing a user to take action in response to signal strength (i.e. a user may move to a location with stronger signal strength while participating in a game).

Response to Arguments

9.   Applicant's arguments filed 6/12/09 have been fully considered but they are not persuasive.

Applicant asserts that Masuyama does not teach or suggest a software platform arranged to use data stored in said first memory means, application program execution environment executable on said platform for executing an application program using data stored in said second memory means, said application program being platform-independent. As stated above, the Examiner interprets a software platform as a means to execute or run software. The work RAM of Masuyama renders a software platform because it a piece of hardware that contains data or instructions to execute the game program, or run software. The data or instructions stored in the work RAM renders the application program execution environment because these instructions provide an "environment" to execute the game program.

10.   Applicant also asserts that the claim recites that the application program
execution environment is a separate environment run on the software platform that
executes an application program which is platform independent. In response to
applicant's argument that the references fail to show certain features of applicant's
invention, it is noted that the features upon which applicant relies (i.e., the application
program execution environment is **a separate environment** (emphasis added) run on
the software platform) are not recited in the rejected claim(s). Although the claims are
interpreted in light of the specification, limitations from the specification are not read into
the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

For these reasons and the reasons above, the rejection applied in the previous
office action has been maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the
examiner should be directed to NAM HUYNH whose telephone number is (571)272-
5970. The examiner can normally be reached on 8 a.m.-5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, George Eng can be reached on 571-272-7495. The fax phone number for
the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George Eng/   /Nam Huynh/
Supervisory Patent Examiner, Art Unit 2617   Examiner, Art Unit 2617